

MINUTES

Rules Review Committee



Representative Jean Hunhoff, Chair
Senator Alan Solano, Vice Chair

Three hundred seventy-sixth meeting
Tuesday
November 20, 2018

Room 414
State Capitol
Pierre, South Dakota

The three hundred seventy-sixth meeting of the Rules Review Committee was called to order by Representative Jean Hunhoff, (Chair), at 9:20 a.m. CDT, on November 20, 2018, in Room 414 at the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Craig Kennedy, Lance Russell, and Alan Solano (Vice Chair), and Representatives Julie Bartling, Steven Haugaard and Jean Hunhoff (Chair). Senator Russell joined the meeting at 12:00 p.m. Staff members present were Doug Decker, Code Counsel, and Kelly Thompson, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file at the Legislative Research Council (LRC). For continuity, these minutes are not necessarily in chronological order. This meeting was recorded by South Dakota Public Broadcasting. The archived recording is available at the LRC website at <http://sdlegislature.gov> under "Interim."

Approval of Minutes

Senator Kennedy moved, seconded by Representative Bartling, that the September 17, 2018 meeting minutes be approved. Motion prevailed on a unanimous voice vote.

Rules Reviewed

Department of Human Services: Amend rules to reflect new federal mandates in the CHOICES waiver services program.

Ms. Beverly Katz and Mr. Darryl Millner, Department of Human Services, reviewed the proposed rules.

Representative Haugaard inquired if reducing the number of reviews would result in any cost savings. Mr. Millner responded there was the potential for a reduction in administrative tasks.

Representative Hunhoff asked if all participants in the program transition to community-based employment. Mr. Millner replied that with the varying levels of disability, if someone is struggling to get those work skills and is approaching the end of the two-year training period, it may be necessary to bring together everyone involved in the individual's life and decide whether their future includes employment.

Senator Solano moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Human Services is complete. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, and Solano.

Department of Social Services: Board of Social Work Examiners: Establish rules for the Assistant Behavior Analyst or Paraprofessional, and amend rules for Social Workers to remove language related to licensure by equivalency; update to the most recent code of ethics; remove the fee schedule for examinations not conducted by the department; revise language for continuing education to allow more hours via online providers; and remove prior Board approval for preparation or publication of a professional social work topic or paper.

Mr. Bob Morris and Ms. Carol Tellinghuisen, Executive Secretary, Board of Social Work Examiners, reviewed the proposed rules.

Public Testimony

Ms. Lisa Stanley, Advisory Committee for Behavioral Analysts, appeared in support of the rules.

Senator Solano expressed concern that the fees are more than what is allowed by state statute; Ms. Tellinghuisen replied the exam fees fall below the \$300 cap set in statute.

Representative Haugaard referenced the style and form letter from LRC stating the Board may be exceeding its authority for some of the proposed rules. Mr. Morris advised the issues were fixed by providing a date certain for the incorporation by reference, for the rules. Responding to Representative Haugaard's questions about where authority is being delegated regarding assistant behavioral analysts and paraprofessionals, Mr. Morris clarified that the Board certifies those individuals and the authority is not delegated to the national Behavior Analyst Certification Board (BACB). Ms. Tellinghuisen said when South Dakota's standards first went into effect, they were based on the national standards as a starting point.

Senator Kennedy disagreed with Mr. Morris that the Board has the authority to promulgate rules covering assistant behavioral analysts and paraprofessionals, prompting Representative Hunhoff to ask what supervision really means if there is no authority to supervise. Mr. Morris responded that administrative rule defines the scope of delivery of treatment and that a licensed behavioral analyst would oversee the lower level positions; they would be liable for the conduct of individuals working beneath them and could be subject to Board action, if necessary.

Senator Solano and Representative Bartling noted these issues had received a lot of discussion by the Legislature, and Senator Solano said he believed the Board has the authority to promulgate the rules.

Senator Kennedy moved, seconded by Representative Haugaard, that the review of the rules proposed by the Department of Social Services: Board of Social Work Examiners is complete and that 20:85:03:01 to 20:85:03:07 should be reverted to a prior step according to SDCL § 1-26-4.7 (4). Motion prevailed on a roll call vote with 3 ayes and 2 nays. Voting aye: Haugaard, Hunhoff, and Kennedy. Voting nay: Bartling and Solano.

Senator Kennedy moved, seconded by Senator Solano, that the remaining rules, with the exception of 20:59:01:10.06, be approved. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, and Solano.

Senator Kennedy moved, seconded by Senator Solano, that 20:59:01:10.06 be reverted to a prior step according to SDCL § 1-26-4.7 (4). Motion prevailed on a roll call vote with 5 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, and Solano.

Department of Health: South Dakota Board of Podiatry Examiners: Amend rules to update language relating to continuing education requirements; remove language regarding examinations by the Board; update language for qualifications of license applicants; update language for applicants holding an out of state license; replace verbiage of certificate of registration with license; remove antiquated language relating to officers of the Board; and update to the most recent version of the Code of Ethics of the American Podiatric Medical Association.

Ms. Jill Lesselyoung and Ms. Carol Tellinghuisen, Executive Secretary, South Dakota Board of Podiatry Examiners, reviewed the proposed rules.

Representative Bartling moved, seconded by Senator Solano, that the review of the rules proposed by the Department of Health: South Dakota Board of Podiatry Examiners is complete. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, and Solano.

Department of Health: South Dakota Board of Pharmacy: Amend rules to provide for an organized way of handling complaints and discipline for the Board of Pharmacy.

Ms. Kari Shanard Koenders, Executive Secretary, South Dakota Board of Pharmacy, reviewed the proposed rules.

Senator Kennedy asked how long it takes for the executive secretary to obtain a response to a complaint. Ms. Shanard Koenders replied the individual is required to respond in two weeks but an extension may be granted for extenuating circumstances.

Senator Kennedy noted in 20:67:04:01, the definition of wholesale drug distributors was not expanded as it was in other instances. Ms. Shanard Koenders advised the oversight would be corrected in the final version of the rules that would be filed with the Secretary of State.

Representative Bartling moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department of Health: South Dakota Board of Pharmacy is complete. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, and Solano.

Department of Health: Amend rules to add newly emerging communicable diseases with public health impact to the Category II reportable diseases and condition list and clarify the methods of reporting.

Ms. Colleen Winter, Department of Health, reviewed the proposed rules.

Senator Kennedy moved, seconded by Senator Solano, that the review of the rules proposed by the Department of Health is complete. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, and Solano.

Department of Health: South Dakota Board of Massage Therapy: Amend rules to increase annual fees from \$45 to \$65 per year and the initial license fee from \$75 to \$100 on massage therapists in South Dakota.

Mr. Mitch Richter, Executive Secretary, South Dakota Board of Massage Therapy, reviewed the proposed rules.

Senator Solano asked when the fees were last increased. Mr. Richter replied they have remain unchanged since 2006. Responding to Representative Haugaard on the number of licensees, Mr. Richter confirmed there are 850.

Senator Solano moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Labor and Regulation: South Dakota Board of Massage Therapy is complete. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, and Solano.

Department of Social Services: Amend rules to update terminology and other language to align with current practice and provide clarification; update citations; add categories of eligible providers for mental health services; clarify coverage for collateral contacts for mental health services; add child development to required orientation training for child care providers; establish a single method for the valuation of life estates for the Medicaid program; repeal duplicate rules; incorporate the reauthorized child care services block grant requirements into rule; replace annual submission of ICAPs within the CHOICES Medicaid waiver program with an ICAP submission requirement upon initiation of services as individual's needs change and every three years; and clarify annual redetermination requirements for the CHOICES waiver.

Ms. Teresa Schulte, Department of Social Services, reviewed the proposed rules, stating all style and form changes suggested by LRC were resolved.

Public Testimony

Ms. Betty Oldenkamp, President and CEO, Lutheran Social Services of South Dakota, testified in support of the rules.

Senator Solano asked about the rules' fiscal impact. **Mr. Bill Snyder, Department of Social Services,** responded that because they clarify current policy, the rules have no additional fiscal impact.

Senator Kennedy questioned why alternate methods for valuing life estates were eliminated. Representative Hunhoff asked if a person could have their estate reevaluated by someone of their own choosing if they disagree with the Department's valuation. Ms. Schulte affirmed the Department does not restrict who an individual can see regarding their life estate and that 67:46:05:04 outlines seven ways to determine fair market value.

Senator Kennedy noted that under the rules as drafted, a person must complete an application for enforcement services when they apply for assistance with childcare costs and commented such action makes it harder for children who need these services to have access to them. Ms. Schulte responded the

Department always required cooperation with child support and it is appropriate that parents should support their children as much as the Department does.

Representative Haugaard wondered if a waiver or exception exists in the immunization form requirements for people who do not want to receive immunizations. **Ms. Carroll Forsch, Department of Social Services**, confirmed there are religious and medical exemptions.

Representative Bartling asked if CPR certification and child development training were combined into a single class individuals could attend. Ms. Forsch responded a free online course is available to all providers at no additional cost to the State.

Representative Hunhoff moved, seconded by Senator Solano, that the review of the rules proposed by the Department of Social Services is complete.

In a substitute motion, Senator Kennedy moved, seconded by Representative Haugaard, that the review of the rules proposed by the Department of Social Services is complete and should be approved with the exception of 67:46:05:08 and 67:47:01:09.01 which should be reverted to a prior step according to SDCL § 1-26-4.7(7). Motion failed on a roll call vote with 2 ayes and 3 nays. Voting aye: Bartling and Kennedy. Voting nay: Haugaard, Hunhoff, and Solano.

Representative Hunhoff moved, seconded by Senator Solano, that the review of the rules proposed by the Department of Social Services is complete. Motion prevailed on a roll call vote with 4 ayes and 1 nay. Voting aye: Bartling, Haugaard, Hunhoff, and Solano. Voting nay: Kennedy.

Department of Education: South Dakota Board of Education Standards: Amend rules to remove the requirements for paraprofessional educators to obtain and renew state-issued certificates.

Ms. Holly Farris, Department of Education, reviewed the proposed rules which are a response to comments from school districts who having difficulty hiring people.

Representative Hunhoff asked what research led to the initial conclusion. **Ms. Carla Leingang, Department of Education**, replied the rules were included to provide more training for paraprofessional educators and give them an educator certificate that could be removed if they violate ethics provisions.

Senator Kennedy moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Education: South Dakota Board of Education Standards is complete. Motion prevailed on a roll call vote with 5 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, and Solano.

Department of Labor and Regulation: South Dakota State Plumbing Commission: Amend rules regulating plumbing installation practices as they relate to the 2015 SD Uniform Plumbing Code; and offset increasing expenditures to maintain operations.

Ms. Nina Ripley, Executive Director, South Dakota State Plumbing Commission, reviewed the proposed rules.

Representative Hunhoff inquired why costs have increased for travel, contractual services, and IT. Ms. Ripley stated the Commission's five inspectors must travel frequently to cover the state, and the IT costs are related to the development of a new program for online license application and renewal which resulted in higher costs than initially estimated.

Senator Kennedy asked if statutory authority exists for examinations and fees for plumbers' apprentice licenses. Ms. Ripley responded that while the law was changed, the rules were not. The examination is optional and designed to prompt apprentices to move up in the field and become journeymen.

Senator Solano moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department of Labor and Regulation: South Dakota State Plumbing Commission is complete and should be approved with the exception of 20:53:03:05 which should be reverted to a prior step according to SDCL § 1-26-4.7 (4). Motion prevailed on a roll call vote with 5 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, and Solano.

Office of the Attorney General: Law Enforcement Officers Standards and Training Commission: Amend rules to authorize individuals to receive a license as a polygraph examiner by completing a course of study at a school certified by the American Association of Police Polygraphists.

Mr. Paul Bachand and Agent Chad Mosteller, Office of the Attorney General, reviewed the proposed rules.

Representative Bartling moved, seconded by Senator Solano, that the review of the rules proposed by the Office of the Attorney General: Law Enforcement Officers Standards and Training Commission is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Revenue: Amend rules to repeal obsolete rules; include language referencing electronic licensure capabilities; clarify that the on-line requirements exception pertains to manufactured home dealers; remove a reference to a department title process that was discontinued based on statutory requirements; increase a title fee to conform with the statutory increase; eliminate outdated practices and redundant rules; conform with changes in statute and comply with style and form guidelines; require title applicants to submit related federal licensure material; and combine or replace related provisions and repeal redundant chapters.

Ms. Morgan Nelson and Mr. Doug Schinkel, Department of Revenue, reviewed the proposed rule pertaining to the Division of Business Tax.

Representative Hunhoff moved, seconded by Representative Bartling, that the review of the rule proposed by the Department of Revenue: Division of Business Tax, 64:09:01:08, is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Ms. Monica Weischedel, Department of Revenue, reviewed the proposed rules pertaining to the Division of Motor Vehicles.

Representative Bartling moved, seconded by Representative Haugaard, that the review of the rules proposed by the Department of Revenue: Division of Motor Vehicles – 61:24:02:03, 61:24:03:12, 64:28:10:01, and 64:29:02:04.03 – is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Mr. Jason Evans, Department of Revenue, reviewed the proposed rules pertaining to the Division of Property and Special Taxes. The rules were the result of an extensive review of alcohol statutes and rules requested by the Governor's Office.

Public Testimony

Mr. Jeremiah M. Murphy, Republic National Distributing Company, opposed the rules, saying their adoption would upset the status quo for wholesalers of wine and spirits. Price reports help to maintain a competitive market for these products while retailer delinquency reports ensure wholesalers are able to recover monies owed to them by retailers. Mr. Murphy requested the rules be reverted so the industry and the Department could continue to meet to discuss better solutions ([Document 1](#)).

In rebuttal, Mr. Evans commented that price reporting for beer wholesalers successfully ended some time ago and the Department believes phasing it out for liquor wholesalers will work as well. Delinquency reporting is also not a requirement for many other states with no issues reported. Mr. Evans stated the Department is not opposed to working with interested parties on other solutions and bringing them forward to the Committee in the future.

Representative Haugaard asked how notice is given on price reports. Mr. Evans responded that price filings are not posted online nor made public to anyone except other wholesalers.

Representative Hunhoff inquired what measurements Mr. Murphy could provide to show retailers benefit from price reporting. Mr. Murphy said he knows retailers respond to lower prices by competitors by lowering prices on their end, which benefits consumers.

Committee members wanted to know if the rules changes surfaced only within the last six weeks and if all parties involved had adequate notice about them. Mr. Evans said the Department began work on the rules changes during the past summer and the industry became aware of them when they were proposed for a rules hearing.

Senator Russell moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Revenue: Division of Property and Special Taxes is complete and the following rules should be reverted to a prior step according to SDCL § 1-26-4.7 (8): 64:75:03:02, 64:75:03:03, 64:75:03:04, 64:75:03:05, 64:75:03:06, 64:75:03:07, 64:75:03:08, 64:75:03:09, 64:75:03:11, and 64:75:03:12. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Senator Solano moved that the review of the remaining rules proposed by the Department of Revenue: Division of Property and Special Taxes is complete. Motion died for lack of a second.

Senator Russell moved, seconded by Representative Bartling, that the review of the remaining rules proposed by the Department of Revenue: Division of Property and Special Taxes is complete and should be approved with the exception of 64:75:04:04 and 64:75:04:05 which should be reverted to a prior step according to SDCL § 1-26-4.7 (6). Motion prevailed on a roll call vote with 5 ayes and 1 nay. Voting aye: Bartling, Hunhoff, Kennedy, Russell, and Solano. Voting nay: Haugaard.

Department of Revenue: South Dakota Commission on Gaming: Modify the rules of play of a variation of Black Jack known as Triple Win 20 and allow for a bonus bet.

Mr. Craig Sparrow, South Dakota Commission on Gaming, reviewed the proposed rules.

Representative Hunhoff moved, seconded by Senator Russell, that the review of the rules proposed by the Department of Revenue: South Dakota Commission on Gaming is complete. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Voting aye: Bartling, Hunhoff, Kennedy, Russell, and Solano. Voting nay: Haugaard.

Department of Labor and Regulation: South Dakota Board of Technical Professions: Amend rules to update terms to match recent changes made by the National Council of Architectural Registration Boards regarding education tracking, and update when a seal is required to be used by a licensee.

Ms. Kathryn Patterson, Executive Director, South Dakota Board of Technical Professions, reviewed the proposed rules.

Senator Kennedy moved, seconded by Senator Solano, that the review of the rules proposed by the Department of Labor and Regulation: South Dakota Board of Technical Professions is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Bureau of Human Resources: Civil Service Commission: Amend rules to list the probationary period in terms of months employed, not hours, and detail the application of a promotional salary increase during the probationary period.

Mr. Aaron Arnold, Bureau of Human Resources, reviewed the proposed rules.

Senator Solano moved, seconded by Representative Bartling, that the review of the rules proposed by the Bureau of Human Resources: Civil Service Commission is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Labor and Regulation: South Dakota Board of Accountancy: Amend rules to update references; add language to waive certain requirements; update definitions, program measurements, criteria and standards for continuing professional education; and repeal rules regarding the South Dakota peer review program.

Ms. Nicole Kasin, Executive Director, South Dakota Board of Accountancy, reviewed the proposed rules.

Representative Haugaard moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department of Labor and Regulation: South Dakota Board of Accountancy is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Labor and Regulation: South Dakota Cosmetology Commission: Amend rules to increase certain fees charged by the Cosmetology Commission, including the examination fee, examination retake fee, personal license renewal fee, instructor initial license and renewal fees, and salon or booth license renewal fees.

Ms. Kate Boyd, Executive Director, South Dakota Cosmetology Commission, reviewed the proposed rules.

Representative Bartling moved, seconded by Representative Haugaard, that the review of the rules proposed by the Department of Labor and Regulation: South Dakota Cosmetology Commission is complete. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, and Solano. Voting nay: Russell.

Department of Agriculture: Amend rules to allow quarantines to be established in South Dakota to combat the spread of emerald ash borer.

Ms. Brenda Sievers, Department of Agriculture, reviewed the proposed rules.

Representative Haugaard wondered when ash trees could be planted in South Dakota again. Ms. Sievers explained the emerald ash borer survives under the bark of the tree and while it can be contained, it cannot be eradicated so it would not be possible to plant the trees again.

Representative Hunhoff moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Agriculture is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Agriculture: South Dakota Animal Industry Board: Amend rules to update definitions to more accurately reflect current terminology and modernize language of reference material; consolidate animal identification rules into one chapter; eliminate redundant language which is already outlined in national program guidance for disease control; update current language of reference material; allow for recognition of other state agency inspections already conducted on meat establishments; eliminate brucellosis test requirements for imported cervids and update identification language to align with federal guidance; and clarify animals subject to official testing require identification and responsibility for payment.

Dr. Dustin Oedekoeven, Department of Agriculture, reviewed the proposed rules.

Senate Kennedy called attention to two sections of the rules to correct for incorrect citations. Dr. Oedekoeven said the corrections would be made before the final rules are filed.

Representative Bartling moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department of Agriculture: South Dakota Animal Industry Board is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Transportation: Amend rules to reduce a 50 miles per hour speed zone on State Trunk Highway 81 in and around Watertown to 45 miles per hour, and extend it further south on State Trunk Highway 81.

Ms. Karla Engle, Department of Transportation, reviewed the proposed rules.

Senator Kennedy moved, seconded by Representative Haugaard, that the review of the rules proposed by the Department of Transportation is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Transportation: Amend rules to reduce the speed limit from 65 miles per hour to 55 miles per hour on State Trunk Highway 50 in and around Tabor.

Ms. Karla Engle, Department of Transportation, reviewed the proposed rules and explained they were the result of a citizen petition that was reviewed twice by the Transportation Commission.

Senator Solano inquired if a speed zone study was conducted in the area. Ms. Engle replied affirmatively, saying the study did not support a reduction and a second study was discussed but not conducted as engineering staff did not note any changes in road conditions. She noted the closure of a gas station in the community resulted in more local traffic going on to the highway and there were strong feelings by the public that a speed zone reduction was needed.

Senator Russell moved, seconded by Representative Hunhoff, that the review of the rules proposed by the Department of Transportation is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Department of Game, Fish and Parks: Amend rules to adjust the hunting season end date in Sica Hollow in Unit 48A to end on May 31; increase the number of resident one-tag male turkey licenses by 55 licenses and decrease the number of resident two-tag male turkey licenses by 150 licenses for the Prairie Units; change the turkey season to end on May 31; change the end of the turkey season for certain open units to end on May 31; reduce the daily limit of pintail ducks from two to one; change the Spring Light Goose Conservation Order which currently runs for 79 consecutive days beginning the day after Unit 2 dark goose season closes to now close on May 15; adjust the white-fronted goose season from 86 days to 74 days; eliminate the use of rifles while hunting turkey; increase the daily bag limit from two to three for white-fronted geese; expand the open unit for Sandhill Crane season by moving the eastern boundary farther east, from Highway 281 to Highways 25 and 81; allow for an elk license to be made for a raffle conducted by a nonprofit organization; introduce a new definition of a "modern cabin" that would include beds, electricity, sewer and water; establish a per night rate for a "modern cabin"; increase the rental cost of the group lodge at Shadehill State Recreation Area; and establish use fees for the amphitheater at Good Earth State Park.

Mr. Tony Leif, Department of Game, Fish and Parks, Wildlife Division, reviewed the proposed rules. **Mr. Bob Schneider, Department of Game, Fish and Parks, Parks and Recreation Division,** told the committee members the modern cabins, which feature two bedrooms and a bathroom, will be constructed in 2019 and be available for reservations in 2020. The first such cabin will be located in Newton Hills State Park.

Representative Hunhoff moved, seconded by Representative Bartling, that the review of the rules proposed by the Department of Game, Fish and Parks is complete. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, and Solano. Voting nay: Russell.

Department of Game, Fish and Parks: Amend rules to restrict applicants for East River, West River, Black Hills, or Muzzleloader deer hunting seasons to submitting no more than one license application for the combined drawing for these seasons; establish a drawing structure in which applicants have to choose a preferred license in either the special buck drawing or the first combined drawing of the East River, West River, Black Hills, or Muzzleloader deer hunting seasons; allow applicants a choice to use preference points for leftover licenses in the first three combined deer drawings; allow for an elk license to be made for a raffle conducted by a nonprofit organization; eliminate the definition of "liberalized fishing" and create a definition for "possession limit"; repeal the liberalized fishing waters restriction; eliminate the license and fee requirement for game fish spearing and archery fishing; remove the closed fishing season for game fish during the spring; repeal rules regulating liberalized fishing; eliminate restrictions on waters in Codington, Hamlin, Day, Marshall, Roberts, and Lake Counties; eliminate the daily harvest restriction of 25 white bass and rock bass, and make the daily limit and possession limit unlimited for inland waters; eliminate the 15 inch minimum requirement for large and small mouth bass except on Lake Yankton and Burke Lake; eliminate or revise length limits for certain fish caught on special management waters; remove the reference to snagging being allowed as a method of take on waters where liberalized fishing rules are in place; allow for the use of a legal bow and arrow to take a paddlefish on Lake Francis Case during the established annual paddlefish snagging season; allow for the use of a legal crossbow and spear guns to take fish and expand the season to year-round; eliminate the requirement to purchase a game fish spearing and archery fishing permit and expand the areas and times in which spearing can take place; change the SD-NE boundary waters gamefish spearing and archery season from July 1 through November 30 to July 1 through December 31; allow the taking of gamefish below Gavins Point Dam on the Missouri River by spearing and archery during established season dates; expand the areas where spearing and bowfishing are prohibited to include the Lewis and Clark and Angostura marinas; add the starry stonewort to the list of plants that are considered aquatic invasive species; allow for the commercial harvest and landowner removal of certain aquatic invasive species; authorize the department secretary to allow for instances in which removal of all water from a boat would not be required prior to leaving a boat ramp parking area; and add Lake Yankton to the list of lakes designated as containment waters.

Mr. Tony Leif, Department of Game, Fish and Parks, Wildlife Division, reviewed the proposed rules.

Public Testimony

Mr. Ken Edel, Rapid City, spoke in opposition to those rules pertaining to fishing, saying public notices on the rules were inconsistent and some of the Department's current regulations are contradictory. The proposed fish harvesting rules will create a biological impact that could cause fisheries to close down. Mr. Edel asserted Department management has adopted a social style of managing to get people engaged while those in the field continue to manage biologically.

In rebuttal, Mr. Leif clarified that all Department regulations start at the grassroots level by staff who deal with the issues firsthand, and that biological impact means population impact. Regarding public notices, the Department complies with the public notice requirements in statute but also disseminates the information by press release and social media.

Representative Hunhoff commented she could not support the \$5 rate on spearfishing and bowfishing nor the proposed rules on plant harvesting. Mr. Leif noted the plant harvesting would be confined to a single body of water.

Representative Hunhoff moved, seconded by Senator Kennedy, that the review of the rules proposed by the Department of Game, Fish and Parks, except for those regarding hunting licenses for deer and elk, is complete and should be approved with the exception of 41:07:01:12(9) which should be reverted to a prior step. Motion failed on a roll call vote with 3 ayes and 3 nays. Voting aye: Haugaard, Hunhoff, and Solano. Voting nay: Bartling, Kennedy, and Russell.

Representative Bartling moved, seconded by Representative Haugaard, that the review of the rules proposed by the Department of Game, Fish and Parks, except for those regarding hunting licenses for deer and elk, is complete. Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Discussion on the remaining rules regarding deer and elk licenses began with Mr. Leif advising the committee that the Department formed a deer hunting stakeholder work group that spent over a year working on a deer management plan. A recurring issue that generated a lot of discussion was the hunting license application system. Under the current lottery system, some deer hunters receive multiple licenses while others get none. License allocation focus groups were held across the state to formulate the details of a plan for a combined drawing system under which all hunters would have the enhanced opportunity to get their preferred license. Mr. Leif said under the new system, about a third of applicants that apply for multiple licenses would be giving up the opportunity to get a second license before the rest of the applicants would have a chance to get one preferred license.

At this time, Senator Solano asked for proponent or opponent testimony from the four DDN sites in Aberdeen, Rapid City, Sioux Falls, and Yankton; no one was present at the sites to provide testimony.

Representative Hunhoff asked if the new system were implemented, how it would be reviewed to determine if the process was successful. Mr. Leif said the most important metric would be the projected 3,500 deer hunters who would get licenses they would not have gotten under the current system. Hunters would also be given the opportunity to test drive the new system this spring to see how it works before

full implementation, and be asked their opinion on it. According to Mr. Leif, it would take three years of operation to determine the effectiveness of the new process and track if hunters were shifting their license preferences.

Representative Haugaard inquired how the information about the changes would be distributed to hunters. Mr. Leif noted the Department's communications staff uses multiple platforms to keep hunters informed including press releases, the website, and social media. The first drawing would occur in late June with the second drawing about 15 to 30 days later; at that time, it would be possible to know how many new and different hunters received a license through the new system.

Senator Solano referenced comments he had received from the public asking why out-of-state hunters can get West River and Black Hills hunting licenses when resident hunters cannot get them. Mr. Leif agreed friction always exists between resident and non-resident hunters over licenses, and the issue is one of supply and demand. Senator Solano commented that a lottery system is the fairest way to issue licenses because everyone can enter the drawing, and the proposed rules were making major changes to what is already a pretty fair system. Mr. Leif responded it has been an emotional discussion that has included what is a fair interpretation of how licenses should be allocated; he noted other states have just one deer hunting season and South Dakota has a unique opportunity with multiple seasons and locations.

Senator Kennedy asked how many applications the Department receives for hunting licenses. Mr. Leif replied over 52,000 hunters applied for licenses in 2017 and provided a breakdown ([Document 2](#)) of the number of licensees per season.

Representative Hunhoff wanted to know where first time hunters would hunt. Mr. Leif said having a license does not guarantee a hunter will have a place to hunt and they would need to get permission to hunt, as licensees do now. Representative Hunhoff commented the proposed rules work on the supposition that people are not hunting because they cannot get a license when there are other factors that could be impacting that decision such as having a place to hunt, if the individual will have to pay to hunt somewhere, and not being able to get permission to hunt where they want to.

If the rules were approved, Representative Haugaard advised the Department to make sure the public had a chance to express their views on the new system after the first drawing next summer. Representative Hunhoff said the Department needs to demonstrate this was a good idea by providing a detailed report next year showing the new system is actually working and drawing in more and new hunters. Representative Bartling relayed her concern over passage of the rules, saying she had not received any favorable comments on the plan from her area and there may unintended consequences with the new system, including a negative impact on tourism. Senator Kennedy noted he received a lot of opposition to the change through emails and phones calls, and while he believed the Department is trying do the right thing, it will be an unpopular decision. Senator Russell said in his area, the public believes the Department does not listen to landowners or sportsmen, and it needs to be more responsive to people's concerns and opinions.

Representative Hunhoff moved that the review of the following rules proposed by the Department of Game, Fish and Parks is complete: 41:06:01:08.01, 41:06:01:09,41:06:01:10, 41:06:26:08, 41:06:26:09, 41:06:26:10, 41:06:26:11, 41:06:26:12, 41:06:26:13, and 41:06:26:14. Motion died for lack of a second.

Representative Haugaard moved, seconded by Representative Hunhoff, that the review of the following rules proposed by the Department of Game, Fish and Parks is complete: 41:06:01:08.01, 41:06:01:09, 41:06:01:10, 41:06:26:08, 41:06:26:09, 41:06:26:10, 41:06:26:11, 41:06:26:12, 41:06:26:13, and 41:06:26:14. Motion failed on a roll call vote with 3 ayes and 3 nays. Voting aye: Haugaard, Hunhoff, and Kennedy. Voting nay: Bartling, Russell, and Solano.

Representative Bartling moved, seconded by Senator Russell, that the review of the following rules proposed by the Department of Game, Fish and Parks is complete: 41:06:01:08.01, 41:06:01:09, 41:06:01:10, 41:06:26:08, 41:06:26:09, 41:06:26:10, 41:06:26:11, 41:06:26:12, 41:06:26:13, and 41:06:26:14, and the rules should be reverted to a prior step according to SDCL § 1-26-4.7 (8). Motion prevailed on a roll call vote with 6 ayes. Voting aye: Bartling, Haugaard, Hunhoff, Kennedy, Russell, and Solano.

Closing Comments

Representative Hunhoff thanked the Committee for their support during the 2018 Interim and noted the expertise of the three members who are attorneys made for good discussions. Representative Bartling, who is not returning to the Legislature, was praised as a good advocate for small business and communities who will be sorely missed; she advised the remaining members that she will continue to follow the Committee's progress. Representative Hunhoff commented that the current committee was the first in her history that reverted rules.

Senator Solano commended Representative Hunhoff for her leadership as chair, saying the diligence of a committee's members is a reflection of the individual who leads the group.

Adjournment

Representative Bartling moved, seconded by Representative Haugaard, that the meeting be adjourned. Motion prevailed on a unanimous voice vote.

Chair Hunhoff adjourned the meeting at 5:54 p.m.